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GUACANAGARI PONTIAC BLACK HAWK
MONTEZUMA CAPTAIN PIPE KEOKUK
GUATIMOTZIN LOGAN SACAGAWEA
POWHATAN CORNPLANTER BENITO JUAREZ
POCAHONTAS JOSEPH BRANT MANGUS
SAMOSET RED JACKET COLORADAS
MASSASOIT LITTLE TURTLE LITTLE CROW
KING PHILIP TECUMSEH SITTING BULL
UNCAS OSCEOLA CHIEF JOSEPH
TEDYUSKUNG SEQUOYA GERONIMO
SHABONEE

TO PERPETUATE THE HISTORY
AND DEVELOPMENT OF THE
PEOPLE REPRESENTED BY THE
ABOVE CHIEFS AND WISE MEN
THIS COLLECTION HAS BEEN
GATHERED BY THEIR FRIEND

EDWARD EVERETT AYER

AND PRESENTED BY HIM
TO
THE NEWBERRY LIBRARY
1911

SPEECH

OF

HORACE EVERETT,

OF VERMONT:

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, IN COMMITTEE OF THE WHOLE,

ON

THE INDIAN ANNUITY BILL,

FRIDAY, JUNE 3, 1836.

WASHINGTON:

NATIONAL INTELLIGENCER OFFICE.

1836.

SPEECH.

Mr. EVERETT said, he had not expected to address the House on any subject connected with our Indian relations until a few days ago. The inquiry into the causes of the Indian hostilities had been brought before the Committee on Indian Affairs, and the papers relating to it had been referred to him for examination. He had intended before the close of the session to present his views in the shape of a report. When, however, this amendment was adopted in that committee—an amendment placing at the disposal of the Executive more than a million of dollars, for the removal of the whole Creek nation by force—in violation of an existing treaty,—he had felt himself compelled to change his purpose, and to present his views to the House whenever that amendment should be considered. Should that pass, a report would be to but little purpose.

He regretted that this extraordinary appropriation should have been attached to an ordinary appropriation bill. It placed him in the dilemma of being charged with obstructing the passage of the bill, of the urgency of which no one was more sensible than himself; or with the responsibility of permitting a measure to pass in silence, which, in his conscience, he believed repugnant to our most sacred obligations, and of the most hazardous tendency. He had desired that this appropriation should have been reported in a separate bill. Had it been so, this bill would have passed as soon as it was reported, and all delay would have been avoided. He did not, therefore, consider himself responsible for the delay. This was not the first time that important measures had been attempted to be carried through on the back of a general appropriation bill. The House was sufficiently forewarned of the consequences. The blame would rest on those who first interposed the obstacle. Mr. E. said, the country being in fact in a state of war, without stopping to inquire by whose fault we had become involved in it, he had voted for every appropriation asked for defence—and as soon as it was asked. But the present question relates to the future—and to consequences which demand that it should not pass without investigation.

Mr. EVERETT requested the Clerk to read the twelfth article of the Creek treaty of the 24th of March, 1832.

"ART. 12. The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their countrymen there; and for this purpose, it is agreed, that, as fast as the Creeks are prepared to emigrate, they shall be removed at the expense of the United States, and shall receive subsistence while upon the journey, and for one year after their arrival at their new homes: *Provided, however*, That this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please."

This, Mr. Chairman, is the obligation we have assumed; this is the right we have guarantied to every Creek Indian—*to go or stay*, as he pleases. To render this right of value, to enable the Creeks to subsist themselves where they were, if they chose to remain, the treaty secured to ninety principal chiefs, each, 640 acres of land, and to every other head of a Creek family

320 acres. These reservations are their homes, on which they are entitled to remain. But from these, it is now proposed to remove them by force.

The amendment proposes to remove 21,000 Creeks; that is the estimated number of the whole nation. It does not, in terms, propose to remove them by force; that purpose is, however, avowed explicitly in the letter of the Secretary of War to the committee, asking for the appropriation; and if the appropriation is granted, the Executive will consider himself authorized to use it, and will use it for the purpose for which it was asked. This letter is dated on the 19th of May, and states: "The state of affairs among the Creek In- "dians in Alabama has induced the President to direct the necessary meas- "ures to be taken for their removal. Heretofore, the instructions have been "in conformity with the treaty—to remove them as they were voluntarily "prepared to go. But actual hostilities have commenced, and it is essential "to their existence, as well as to the safety of the settlements in contact with "them, that they should be established in their country west of the Missis- "sippi, without delay. The right to remove them by force, if necessary, re- "sults from the attitude in which they have placed themselves, by the com- "mencement of hostilities," &c.

Here, then, Mr. Chairman, is our treaty obligation on the one hand, and the power claimed on the other. On what ground is it claimed? It can be claimed only on the ground that the treaty is dissolved by a war on the part of the *Creek nation*. An act of hostility by an individual, or one of the bands of the tribe, would not have that effect. No, sir; it must be a war between the Creek nation and the United States; that only would dissolve the obligation of the treaty; and before this House sanctions the exercise of this high power—this war power, of removing the whole Creek nation by force—it should be satisfied that the Creek nation has made war upon us, as a national act. On what evidence is this House called upon to act? On a letter from the Secretary of War to a committee, stating that actual hostilities have commenced, unaccompanied by any evidence of the character or extent of those hostilities. It gives us no facts, on which his declaration is founded, to enable the House to judge if the right to remove the Creeks by force is justifiable. Are we to act on this declaration? Are we to collect our facts from newspapers, private letters, or rumors? and if we should, what do they all amount to? From no source, that can be relied on, have I sufficient evidence to believe that, at the date of this letter, any white man had seen twenty-five Creeks embodied in arms. True, this is no evidence that more have not been in arms. But I should not be surprised if it should turn out that the whole number was then less than two hundred and fifty.

There is, however, some negative testimony. I will refer the committee to a semi-official publication in the Globe, of the 30th of May. It states that "Colonel Hogan wrote, on the 24th of April, that there was no "more disposition among the Creeks of the upper towns for hostilities than "there was among the citizens of Washington, and that he did not believe "there was any such disposition among the Creeks of the lower towns." This letter was received here on the 5th, and "on that day Governor Clay "was again informed, that, *should the Indians meditate* hostilities, any force "he might find necessary to call out for the protection of the inhabitants "would be received into the service of the United States. The same in- "formation and the same authority was given to Governor Schley, on the "13th of May." This is the account of the Indian hostilities, as published on the 30th of May. The orders to the Governors of Alabama and Georgia do not refer to actual hostilities, but to *meditated* hostilities.

But, sir, if a state of war exists, why has no communication of the fact been made by the President? I do not go the length of saying there should be no communication between the heads of the Departments and the committees of this House. In matters of minor consequence, convenience requires it. But, sir, on questions involving a change of our relations with nations with whom we have treaties—on questions of peace and war—I hold that a head of Department and committees of the House are not the proper organs of communication between the Executive and Congress. Such communication should be made by the President, and to both Houses, to whom it appertains to take order thereon. Measures new and important are not to be sprung upon the House through a report of a committee. The President is the only constitutional organ of communication between the Executive and Legislative Departments. It is his constitutional duty, "from time to time, to give to Congress "information of the state of the Union, and to recommend such measures as "he shall judge expedient." Sir, I would hold him to this duty—to this responsibility. If the House acts on its own motion, on its own information, it acts on its own responsibility. That responsibility, for one, I am not willing, in this instance, to assume.

Mr. Chairman, I now offer an amendment, as a substitute for the amendment of the committee. I do not propose to lessen the appropriation, but to restrict its application. I do not make it a question of amount, but of principle. I am willing to give to the Executive ample means to remove all the Indians, but propose to divide the amount so that a part shall be applicable to the removal of those who *please to go*, and the residue to those who may be in arms; but that no part shall be applicable to those who are neither hostile nor willing to remove. This amendment will be applicable to the Seminoles, as well as to the Creeks, and will also enable the Executive to resort to pacific, as well as warlike measures, for their removal.

The amendment, as it came from the Senate, was for a removal of the Creeks who should voluntarily assent to go, and was based on the removal of 12,000.

For this purpose, in addition to an unexpended balance of		$155,000
It appropriated the sum of - - - -		348,230
		503,230
To this, the committee of the House have added, under the call of the Secretary of War, on an estimate for removing the residue of the nation, - - - -		675,320
		1,178,550
And to this may be added, for the removal of the Seminoles, an unexpended balance of - -	$33,000	
And an additional appropriation of - -	100,000	
		133,000
Making for the removal of the Creeks and Seminoles -		$1,311,550

Should the substitute be adopted, the amendment will stand: "For the removal of Creek Indians, and their subsistence for one year, including subsistence for those recently removed, in addition to one hundred and fifty-five thousand dollars of former appropriations, three hundred and forty-eight thousand two hundred and thirty dollars, *under the 12th article of the Creek treaty of* 1832.

"*For holding treaties with the hostile Indians east of the Mississippi river, and for their removal west of that river, six hundred and seventy-five thousand three hundred and twenty dollars.*"

Mr. Chairman, this presents the important question in relation to all the hostile Indians, Creeks and Seminoles:—Shall force be the only means of effecting their removal? I propose a pacific measure; and by the term in the appropriation, "*for holding treaties*," to indicate to the Executive the opinion of this House—in the hope that it will not be disregarded.

It seems to be taken for granted by some gentlemen that we cannot, consistently with our national honor, hold treaties, or even attempt a pacification of hostile Indians. It is said by the gentleman from Alabama, (Mr. LAWLER,) that they must be *whipped* before they can be removed. What, sir! send *whipped* Indians west of the Mississippi! Of that I shall have a word to say hereafter. Our honor! What of honor have we gained already in our attempt to whip the Seminoles? And what of honor would be gained, if, by extermination, we make a grand finale of the hostile tribes? But, sir, this is also a question of interest. I will thank the Clerk to state the amount already appropriated on account of these Indian hostilities—[$2,620,000, besides rations to the starving inhabitants]—more will be immediately required. Add to this the expense of another campaign—of an army of 5,000. And to this, the amount of the losses of the inhabitants of Florida and Alabama—some millions more. This, though an individual loss, is not the less a loss to the country. Possibly it may become a direct national loss. On that question I do not intend to commit myself; but, sir, if the sufferers claim indemnity, they will, as their only ground, base their claims on the fact that their loss was occasioned (to use the mildest phrase) by an improvident act of the Government. In addition to all this, look to the loss of human life.

It is evident, sir, that the Seminole war was the immediate cause of the Creek hostilities. Other causes have no doubt concurred—causes of irritation, producing a pre-disposition to hostility, called into action by the success of the Seminoles. What shall be done? Shall we fight it out to the last, or attempt a pacification? Sir, in selecting our course, much will depend on the answer to the question, "*is our quarrel just?*" And it is time this question was answered.

In answering this question, I shall take occasion to inquire into the causes of the Seminole war. I shall stop where the war commenced, leaving it for others to examine into the manner in which it has been conducted. I pass this over to the military gentlemen of the House—to the Committee on Military Affairs—to institute the proper inquiry. I have no doubt they will do their duty.

Preliminary to the investigation, I will suggest two considerations, which should be borne in mind during the investigation. The first is, the unequal terms on which we always treat with the Indian tribes—our superior intelligence—their necessities—the fact that our treaties are, as they say, white men's treaties, made in *our* language, translated by *our* interpreters, and by them imperfectly *understood* and imperfectly remembered. The other is, that we are our own historians—we tell the whole story—they, particularly the Seminoles, were refused permission to send a delegation here to tell their part of the story. In reply to their application, they were told, "*This made the President angry.*" From considerations such as these, in all questions of doubt, proper allowances should be made in their favor.

I will also notice some things of minor importance, which may have had an unfavorable influence:

The eager desire of the whites to obtain their land.—General Eaton, in his letter of the 8th of March, 1835, says—

"The people here want the lands on which they (the Seminoles) reside; and they will orge a removal, *fas aut nefas;* and the Big Swamp, which, in the treaty, is declared to be the first of their country to be vacated, is of high repute; and it is that on which the eyes of speculators are fixed."

The unprincipled desire to obtain their negroes.—General Thompson, in his letter of the 28th of October, 1834, says—

"There are many very likely negroes in this nation; some of the whites in the adjacent settlements manifest a restless desire to obtain them; and I have no doubt that Indian-raised negroes now in possession of the whites, some of the negroes in the nation, with some of the Indians, have been induced, by bribery or otherwise, to stir up hostility among the Indians to the intended emigration, for the purpose of detaining the negroes here until the territorial jurisdiction shall be extended over the Indian country, so as to enable fraudulent claimants to prosecute their claims in the Territorial courts, &c."

The opposing influence of the negroes, excited by the fear of their being sold to slave-dealers.—General Thompson, in his letter of the 27th of April, 1835, a letter of great interest, says—

"Application was made to me this morning for permission to purchase negroes of the Seminole Indians, under a letter from the Office of Indian Affairs, addressed to General Call, in which the Commissioner says, as there is no law prohibiting the sale of slaves by Indians, there is no necessity for the interference of the Department to allow the Indians a privilege which they already have." "The negroes in the nation dread the idea of being transferred from their present state of ease and comparative liberty, to bondage and hard labor, under overseers on sugar and cotton plantations. They have always had a great influence on the Indians. They live in villages, separate, and, in many cases, remote from their owners, enjoying equal liberty with their owners, with the single exception that the slave supplies his owner annually, from the product of his little field, with corn in proportion to the amount of the crop; in no instance that has come to my knowledge, exceeding ten bushels: the residue is considered the property of the slave. Many of these slaves have stocks of horses, cows, and hogs, with which the Indian owner never assumes the right to intermeddle. I am thus particular on this point, that you may understand the true cause of the abhorrence of the negroes of even the idea of any change; and the indulgence so extended by the owner to the slave will enable you to credit the assertion that an Indian would almost as soon sell his child as his slave, except when in a state of intoxication."

On this occasion, sir, General Thompson did his duty—he refused permission to the applicants to purchase slaves, or to say any thing on the subject. The answer to this letter is not among the papers in my possession.

In this investigation, I shall endeavor to confine myself to our own record. I regret, sir, that the documents just laid on your table are not printed, and in the hands of all the members, that they might go along with me, page by page. I desired that the discussion should be delayed a day or two for that purpose. But it is the pleasure of the House that the discussion shall now proceed.

On the 8th of January, 1821, the Creek treaty of Indian Springs was concluded. At that time the Seminole band was a component part of the Creek nation. To this treaty I shall have occasion to refer hereafter.

On the 18th of September, 1823, the treaty of Camp Moultrie was concluded with the Seminoles, they having then separated from the Creeks. By this treaty, we engaged to pay them annuities for twenty years, and guaranties to them their narrow limits. They were restricted from the sea-coast, and confined to the hammocks and swamps, which they are now defending to the last drop of blood. Miserable as their country is, they cling to it with the grasp of death. This treaty, unless abrogated by a subsequent treaty, was an existing treaty at the commencement of the present war.

On the 9th of May, 1832, the Seminole treaty of Payne's Landing was concluded. The Seminoles have alleged that it was forced upon them. But, sir, in our own story I find no evidence of the fact; all that I find is, that at that time they were in a state of starvation; we deemed it a fit occasion for holding a treaty. We were not, however, the cause of their famine; nor were we accountable for its consequences. We did no more than to take all due advantage of the fact.

I ask the Clerk to read the preamble and the 7th article:

"The Seminole Indians, regarding with just respect the solicitude manifested by the President of the United States for the improvement of their condition, by recommending their removal to a country more suitable to their habits and wants than the one they at present occupy in the Territory of Florida, are willing that their confidential chiefs, Jumper, Fuch-a-lus-ti-co-had-jo, Charley Emartla, Coi-had-jo, Holati-Emartla, Yaha-hadjo, Sam Jones, accompanied by their faithful interpreter, Abraham, should be sent, at the expense of the United States, as early as convenient, to examine the country assigned to the Creeks west of the Mississippi river; and should they be satisfied with the character of that country, and of the favorable disposition of the Creeks to *re-unite* with the Seminoles as one people, the articles of the compact and agreement herein stipulated at Payne's Landing, on the Ocklewaha river, this ninth day of May, one thousand eight hundred and thirty-two, between James Gadsden for and in behalf of the United States, and the undersigned chiefs and head-men for and in behalf of the Seminole Indians, shall be binding on the respective parties."

"ARTICLE VII. The Seminole Indians will remove within three (3) years after the ratification of this agreement, and the expenses of their removal shall be defrayed by the United States; and such subsistence shall also be furnished them, for a term not exceeding twelve (12) months, after their arrival at their new residence, as in the opinion of the President their numbers and circumstances may require; the emigration to commence as early as practicable in the year eighteen hundred and thirty-three (1833;) and with those Indians occupying the Big Swamp, and other parts of the country, beyond the limits as defined in the second article of the treaty concluded at Camp Moultrie creek, so that the whole of that proportion of the Seminoles may be removed within the year aforesaid; and the remainder of the tribe, in about equal proportions, during the subsequent years of eighteen hundred and thirty-four and five, (1834 and 1835.)"

In relation to this treaty, I shall now, Mr. Chairman, endeavor to sustain the three following positions:

I. That the treaty never became obligatory on the Seminoles.

II. That the Government have attempted to execute it contrary to their own interpretation.

III. That they have attempted to execute it by *an act of war*, before the commission of any hostile act on the part of the Seminoles.

If I sustain these positions, I shall have shown, satisfactorily, the causes of the Seminole war; and answered the question, "is our quarrel just?"

The treaty of Payne's Landing never became obligatory on the Seminoles,

1. Because the condition precedent, on which alone it could become obligatory, was not fulfilled.

That condition, in substance, was, that the Seminole delegation should, after visiting the western country, be satisficd with the character of the country to which they proposed to emigrate; and, also, of the favorable disposition of the Creeks (who were entitled to the country, and with whom it was proposed they should hereafter reside,) to re-unite with the Seminoles as one people.

The delegation visited the western country, and, before their return, or having any communication with their tribe, on the 28th March, 1833, at Fort Gibson, signed articles with our commissioners, by which they expressed themselves

satisfied with the character of the country, and of the favorable disposition of the Creeks to *unite* with the Seminoles as one people. This, on the face of it, with the exception of the change of the word *unite* for *re-unite*, is a literal declaration of what was required by the treaty. But was it a substantial compliance? was it an act of which, in good faith, we ought to avail ourselves? Is the complaint of the Indians without cause? General Thompson, in his letter of the 28th October, 1834, states it in their own language: "Jumper says, they agreed at Payne's Landing to go and examine the country; "but they were not bound to move to it, until the nation should agree to it, "after the return of the delegation."

The delegation were their confidential chiefs—the agents of the Seminoles; or, if you please, umpires authorized to determine for them. But, sir, were not the Seminoles to be heard before them, as well as the United States? They were not heard. The delegation went to visit the west, and there, before returning to consult the Seminoles, surrounded by the whites, signed their determination. The Seminoles complained, and with justice, that the determination was made on an *ex parte* hearing. On their return, the delegation reported that they were satisfied with the country, and the Creeks there. But their objection was to the hostile disposition of the surrounding tribes —that they saw scalps brought in. They were then told, treaties would be made with the hostile tribes, of which they would be informed. Sir, they claimed a right to be heard, before their delegation made a final decision.

But, sir, this is not the most material part of the objection. A part of the condition was, that the delegation should be satisfied with the disposition of the Creeks—of the Creek nation to *re-unite* with them as one people. I now ask the attention of the committee to the facts.

By a treaty concluded with the Creek nation east of the Mississippi, on the 24th March, 1832, almost cotemporaneous with the Seminole treaty, the country west of the Mississippi was secured to the Creek nation. The emigration commenced; and it appears, by a document annexed to the report of the Committee of Indian Affairs of February, 1834, that the whole number of the Creeks who had emigrated to the west was only 2,459, while the number remaining east was 22,638. The assent of the delegation to the supplemental treaty, declaring themselves satisfied, was yielded on the 28th March, 1833; they had, therefore, consulted only this small portion west. This was known to our commissioners at the time, and to our Government before the ratification of the treaty. This is no technical ground of objection. But a consequence resulted, that formed a substantial reason why the Seminoles should decline to emigrate.

While a component part of the Creek nation, the Seminoles were a separate band, and, as such, were united with the Creeks. The treaty of Payne's Landing contemplated a reunion—not an amalgamation. By the treaty concluded with the Creeks west, on the 14th February, 1833, and the supplemental Seminole treaty of 28th March, 1833, the Seminoles were to be located by themselves, and a tract of land was designated for their location. Their rights to any location depended entirely on the assent of the Creek nation. The Creeks west assented for themselves only; but, in relation to this, the Creeks east were neither consulted nor informed. The fact of this treaty of the Creeks west was concealed from them. Perhaps the term *concealed* is too strong: it was, however, not communicated to them. These, as inferences, are drawn from a document which I will now ask the Clerk to read. It is a letter from General Eaton to the Secretary of War, of the 8th March, 1835, to a portion of which I will ask the attention of the committee.

"There is another difficulty in the minds of these people: a separate tract, out of the Creek lands, has been set apart for their homes. There is a ratified treaty in your office, made by General Stokes, Ellsworth, and Schermerhorn, with the Creeks, which authorizes the location. *While* negotiating with the Indians *last year*, at Washington, I understood the Creeks *discovered* this act, and had sent word to the Seminole bands, that while they were willing to receive them in their limits as a portion of their nation, they would not suffer them to enjoy any separate allotment of their soil. This, too, has intimidated them, and is, I dare say, the essential cause of their reluctance to go off."

Yes, sir, in the winter of 1834, they *discovered* this western Creek treaty, making the separate location: they rejected it; they had a right so to do; they sent word to the Seminoles that they would not agree to it. And this, General Eaton says, was, in his opinion, the essential cause of their refusal to go off. But how was this material? What objection could the Seminoles have to an amalgamation with the Creek nation? I ask the attention of the committee to the grounds of their objection.

By the Creek treaty of 1821, before mentioned, it was agreed that the sum of $250,000 of the money to be paid to the Creeks for the cession of their lands should be paid to citizens of Georgia, for property taken or destroyed by the Creeks (then including the Seminoles) prior to the passage of the intercourse act of 1802, and which was accordingly reserved, and subsequently paid. The spoliation provided for must have taken place nineteen years before this treaty; and, during these nineteen years, individuals claimed and possessed the property originally taken from the citizens of Georgia. The treaty on the part of the Creeks could never have been intended to disturb the rights of individuals of the tribes, or of any of its bands. Between the date of that treaty, and that of the Seminole treaty of 1832, no such claim was set up. In the mean time, intermarriages had taken place between the Seminoles and their slaves. The first we hear of any claim was prior to the ratification of the treaty of Payne's Landing. General Thompson, in his report of the 1st January, 1834, to Governor Duval, and by him enclosed to the Commissioner of Indian Affairs on the 20th, says: "The principal causes "which operate to cherish this feeling hostile to emigration are, first, the fear "that their reunion with the Creeks, which will subject them to the govern- "ment and control of the Creeks' national council, will be a surrender of a "large negro property to the Creeks as antagonist claimants." "The Creeks' "claim to the negroes now in possession of the Seminoles grows out of the "treaty of 1821." "They have an agent now in the Seminole country urging "the claim of the Creeks to negroes, or their descendants, which formed a "part of the consideration for which the Creeks consented to pay the "$250,000 to the Georgia claimants." It will be seen that the claim thus brought forward in 1834 referred to transactions of thirty-two years' standing, and was for negroes taken, and their descendants—for the wives and children of the Seminoles.

General Thompson, in his letter to the Commissioner of Indian Affairs of the 15th July, 1834, again refers to this claim in connexion with the subject of amalgamation: "If, as a distinct body, under the protection and control "of their own chiefs, located on the territory assigned to them adjoining the "Creeks, the Seminoles would be afraid that a general council of the two "tribes would deprive them of the slaves in question, it seems to me that "their fears could not fail to be greatly increased by a promiscuous introduction "of them among the Creeks, which would reduce their chiefs to privates, and "subject them and their slaves more certainly to the entire control of the "Creeks." Thus, sir, it appears their objection to amalgamation was

founded on substantial reasons. Nor were they bound by the treaty to amalgamate with the Creeks; nor were the Creeks east bound by the act of the Creeks west, assigning them a separate location. The country west was ceded to the whole Creek nation; no part of it could be ceded to the Seminoles, without the assent of the Creek nation; neither the first ten Creek emigrants, nor the first hundrod, nor the first 2,459, had the right to cede the whole or any part of the territory.

Thus, Mr. Chairman, it appears, in point of fact, that the delegation signed the supplemental treaty, at Fort Gibson, surrounded by our commissioners and people, without consulting their tribe; that they never consulted the Creeks east; that no location was made that was authorized by the Creek nation; and that this was known to the commissioners at the time the supplemental treaty was signed. In addition to this, that the Creeks east insisted on their amalgamation, the Creeks west had agreed only to a reunion; that the Seminoles, for substantial reasons, refused to amalgamate, and that all this was known to our Government before the ratification of the treaty. The act, then, of the delegation, however formal, was an act done without authority, and, in its operation, in fraud of the rights of the Seminoles. Can, then, the United States, honestly or decently avail themselves of this act as evidence of the fulfilment of the condition precedent?

It should be borne in mind that the question raised is between the parties to the treaty, and not between one of the parties and its citizens, or between the executive and the legislative power.

The next objection to the validity of the treaty is, that it was not ratified on our part, and an appropriation made to carry it into effect, until two years had elapsed; during which period, it was, by its terms, to have been in the course of execution.

The treaty was concluded on the 9th May, 1832, and was received on the 29th; and during the session of Congress, which adjourned on the 16th July, provision was made for commissioners on our part to meet the Seminole delegation at Fort Gibson, in October, 1833. At what time either arrived there, or for what reason the supplemental treaty, or that with the Creeks west, was delayed, does not appear. The treaty with the Creeks west was signed at Fort Gibson on the 14th February, 1833, and the supplemental Seminole treaty on the 28th March following, and received at Washington on the 28th of October of the same year. The Seminole treaties were ratified on the 8th and 12th April, 1834.

From this statement of facts, it will be seen that the treaty of 1832 might have been ratified in 1832, and an appropriation been made provisionally for its execution in 1833. The condition precedent was to be fulfilled by an *act* on the part of the Seminoles, and required no subsequent assent on our part.

On these facts I submit, as an opening argument against the validity of the treaty, an extract from the letter of General Eaton, of the 8th of March, 1835, which has been read:

"I have received your letter, with its enclosures, relative to removing the Seminole Indians, under the provisions of the treaty of 1832, but which was not ratified until 1834. I pray you, does not this circumstance raise a doubt whether, by strict rule, the treaty can be considered valid and binding? Our Indian compacts must be construed and controlled by the rules which civilized people practise, because, in all our actions with them, we have put the treaty-making machinery in operation, precisely in the same way, and to the same extent, that it is employed with the civilized powers of Europe. The rule practised upon by us has been, and is, that the ratification shall take place either within an agreed time, or in a reasonable time. When Florida was ceded, in 1819, the Cortes failed to exchange ratifications within the prescribed time, and after-

wards, at a subsequent session, it was assented to by the Spanish Cortes. The sense of this Government was, that the first ratification made by the Senate was inoperative, and again the subject was submitted by Mr. Monroe for the action and approval of the Senate. This appears to me to be a precedent that runs parallel with this Indian compact. It says, one-third shall remove the first year, viz: as early as practicable in 1833; and one-third in the next, and the next, 1834 and '35. Now, until 1834, when the ratification took place, the treaty was a dead letter. It is in their power now to plead, and say, we were ready in 1833 and '34; and hearing nothing of your determination, we had a right to suppose you did not mean to stand by the treaty, and accordingly our minds have changed. With civilized nations, I think the plea would be available, and, if so, the Indian should have the benefit of it."

In consequence of this letter, the subject was referred to the Attorney General, whose opinion I now present to the committee.

"ATTORNEY GENERAL'S OFFICE, *March* 26, 1835."

"SIR: In your letter of the 21st instant, after enclosing to me a communication of Governor Eaton, in which he suggests doubts concerning the validity of the treaty with the Seminole Indians, concluded on the 9th of May, 1832, and ratified on the 9th April, 1834, in consequence of the delay which took place in the ratification, you requested my opinion upon the validity of the treaty, and upon the right of the United States to remove these Indians in the years 1835, 1836, and 1837.

"There is certainly great force in the suggestions made by Governor Eaton; and as the Government, in its relations with the Indians, is necessarily obliged to become, for all practical purposes, its own interpreter and judge, it is under the highest obligation to make no claim under the treaty, and to set up no construction of its terms, which are not fairly authorized by its sense and spirit. And if it can be shown that a material change of circumstances, connected with the question of removal, had actually occurred, during the period which elapsed between the signing and ratification of the treaty, then it is plain that the Indians can no longer be held to it, unless by some act since its ratification they have recognised and affirmed its validity. In the present case, as no time was limited for the ratification of the treaty; as the supplemental articles of the 28th March, 1833, treated it as yet in existence, although not then ratified by the President and Senate; and as no material change of circumstances is suggested, I think it must be deemed a valid and subsisting treaty.

"If the treaty be valid, the particular intent to remove in 1833, 1834, and 1835, must yield to the general engagement to remove in three years from the ratification; and the same provision must be made for the unforeseen case which has now arisen, which was expressly made for the case anticipated. It was evidently the understanding and the design of the parties that the removal should commence with the year following the ratification, and that the tribe should remove in about equal proportions during that and the two following years; consequently, they are now to be removed in the years 1835, 1836, and 1837.

"B. F. BUTLER."

I take it for granted that the Attorney General has made the best of his case; and, with great deference, I will now proceed to examine the reasons on which it is founded.

1st. "As no time was limited for the ratification of the treaty." But, sir, the time for the commencement of its execution was fixed. The Seminoles are to commence their removal in 1833. This could not be obligatory on the Seminoles, unless the treaty was also obligatory on the United States—unless the treaty was ratified. It was undoubtedly contemplated, at the time of its being signed, that it would have been ratified in 1832. It was proper that it should have been so done. The stipulations on both sides were settled. All that remained to be done was to be done by the separate act of the Seminoles; it required no assent on our part. Why should they be asked to do that act before we had said that, when done, it should be final? But, before the ratification, the act of the Seminoles conferred no obligation on us to ratify the treaty. Had it been immediately ratified, the Seminole delegation must, if they wished to hold us to the treaty, have done the act

required in season to have commenced the removal in 1833. If it was their fault that the act was not performed in time to commence before 1835, they could not hold us to the treaty, but on condition that they all removed in that year. They could not avail themselves of their own delay. The attorney general seems wholly to overlook the consideration, that we might and ought, immediately, during the session of Congress, when the treaty was returned, to have ratified it. But the delay of 1834 is solely imputable to our own neglect. The supplemental treaty was received in September, 1833, and no appropriation was made to carry it into effect during 1834. The principle of the Attorney General has no limit. If two years of the period of the execution might elapse, why not the three years, or ten years?

2d. "As the supplemental articles of the 28th of March, 1833, treated it as yet in existence, although not then ratified by the President and Senate." Is it probable that the Seminole delegation knew whether it was ratified or not, or the effect of treating it as an existing treaty? If they considered it had been ratified, then they must have considered that the supplemental treaty made it binding; but would their considering one way or the other impose an obligation on the United States to ratify it? The signing the supplemental articles, then, did not make it binding on us or them.

3d. "As no material change of circumstances is suggested." And who, sir, was there to suggest it? It was an *ex parte* hearing. The Seminoles had no delegation there to make suggestions. The only thing before the Attorney General seems to have been General Eaton's letter and the treaty. But, considering this a treaty between two nations, admitting we have taken upon ourselves to be our own interpreters on questions of construction, are we entitled also to take upon ourselves to be the exclusive judges of the situation of the Seminoles? Had not they at least an equal right to judge of their own condition? They certainly had the best means of judging. They required no suggestions. They had this right. They exercised it; and of their determination we were informed before the ratification of the treaty—so well informed of it, that, as I shall show hereafter, it was then in contemplation that it might be necessary to use force to compel its execution.

Mr. Chairman, I have not yet done with the opinion of the Attorney General. I shall now rely upon it as an authority to show that the treaty was not obligatory on the Seminoles; I shall show that "a material change of circumstances" connected with the question of removal had actually occurred during the period which elapsed between the signing and ratification of the treaty.

What, sir, was the situation, or rather what were the "*circumstances*" of the Seminoles when this treaty was signed? They were living separate from the Creeks; they had had, from 1802 up to that time, a period of thirty years, undisturbed possession of the negroes taken by them from the citizens of Georgia. The claim of the people of Georgia was quieted by the Creek treaty before mentioned, of 1821. Since that time, the Creeks had set up no claim to them. No objection against the re-union of the Creeks and Seminoles, according to their former condition, existed, or was known to exist, on the part of the Creeks. Under this state of things, the treaty was signed; and it was signed on the basis of the continuance of this state of things; that the Seminoles should, as a separate band, be re-united to and form a component part of the Creek nation, as one people. But what was the situation of the Seminoles—what were their "*circumstances*" when the treaty was ratified, April 8, 1834? In the mean time, two material circumstances, or rather, a change of two material circumstances had occurred.

1. The Creeks had set up a claim to the negroes and their descendants, taken by the Seminoles from the people of Georgia prior to 1802, under the pretence that, on the payment of the $250,000 under the treaty of 1821, they became the property of the Creek nation, of which the Seminole band was a part. This has been already sufficiently explained. To the Seminoles it was no consolation that the claim was unjust; for,

2. The Creeks east had refused to sanction the agreement of the Creeks west, allowing to the Seminoles a separate location. This was, in effect, a refusal on the part of the Creeks to re-unite with the Seminoles. No, sir, they would not re-unite, but insisted on an amalgamation. It was certain that an amalgamation would subject this claim to the decision of the Creek council; from which the Seminoles had nothing to hope. Sir, this was no pretence. The objection was taken in good faith. You have the opinion of General Eaton that it was the *essential cause* of their unwillingness to go at all.

The materiality of this change of circumstances is manifest; it was the essential cause of the reluctance of the Seminoles to emigrate. In fine, it rendered the execution of the treaty impracticable, consistently with the just rights of the Seminoles; and had it existed at the date of the treaty, that treaty would not have been made.

These objections were communicated to our Government, as I have before stated, prior to the ratification of the treaty; and so important were they then deemed, that General Thompson, in his report of the 1st of January, 1834, recommended "the policy of conclusively quieting the Creek claims, so as to leave those Indians (the Seminoles) forever at rest upon the subject."

I will here remark, sir, that General Thompson, in a subsequent letter, suggests a doubt as to the construction of the treaty of 1832—whether it gave to the Seminoles the right to a separate location, or obliged them to amalgamate. He gave to it the former construction, though he thought it susceptible of the latter. But, sir, we shall be placed in this dilemma: if the latter construction be adopted, the location was void, as made contrary to the treaty; if the former, then we are met by the refusal of the Creeks east; and in both we are met by the fact of a material change of circumstances between the signing and the ratification.

On the case as now made, I claim the authority of the opinion of the Attorney General as decisive against the validity of the treaty:

"Unless, by some act since its ratification, they have recognised and affirmed its validity."

But, sir, the Secretary of War, in his communication of the 25th of May, this day laid on our tables, takes a new ground, with a view of making a case within this exception. I did not expect it. Yet, sir, I am prepared to meet it. Referring to a transaction of the 23d of April, 1835, he says:

"In obedience to the resolution of the House of Representatives of the 21st instant, I have the honor to state that this Department has not received any information since my report of the 9th of February, to the Senate, in answer to their resolution of February 3d, showing the causes that induced the Seminole Indians to commence hostilities, so far as they were known here. The abstract contained in the report I have the honor to enclose; and I beg leave, in addition, to state, that it will appear, by reference thereto, and to the document submitted with it to the Senate, that the complaints of the Seminole Indians were investigated by General Clinch, General Thompson, and Lieutenant Harris; and that, on a full consideration of the whole matter in open council, an arrangement was made to the mutual satisfaction of the parties, which was in the following terms:

"We, the undersigned chiefs and sub-chiefs of the Seminole tribe of Indians, do hereby, for ourselves and for our people, voluntarily acknowledge the validity of the

treaty between the United States and the Seminole nation of Indians, made and concloded at Payne's Landing, nn the Ocklewaha river, on the 9th of May, 1832, and the treaty between the United States and the Seminole nation of Indians, made and concluded at Fort Gibson, on the 28th day of March, 1833, by Montford Stokes, H. L. Ellsworth, and J. F. Schermerhorn, commissioners on the part of the United States, and the delegates of the said nation of Seminole Indians on the part of the said nation; and we, the said chiefs and sub-chiefs, do, for oorselves and for our people, freely and fully assent to the above recited treaties, in all their provisions and stipulations.

"Done in council at the Seminole agency, this 23d day of April, 1835."

[*Signed by sixteen chiefs and sub-chiefs.*]

When I said that the Secretary had taken a new ground, I did not mean to be understood that these articles were now for the first time published; they were inserted in the answer to the call of the Senate of the 9th February. But, sir, this is the first declaration, in form, that they were relied on, by the Executive, as a confirmation of the treaty, or that any obligation whatever was intended to be inferred from them.

Passing by the question whether this act, on the face of it, committed the Seminole tribe, I will now, sir, proceed to state to the committee the circumstances under which it was executed; and here, too, I shall confine myself to our own story, as recorded in the War Office.

On the 22d April, 1835, a council of the Seminole chiefs was assembled by General Clinch and Captain Harris, of the army, and General Thompson, the removing agent. Prior to this, they had been informed of the determination of the Seminoles, with few exceptions, not to execute the treaty; and orders had been given to General Clinch to execute it by military force. An account of the proceedings at this council is given in the joint letter of the 24th of April.

On the first day of the council, General Clinch said to the Seminoles:

"The time of expostolation had passed; that, already, too much had been said, and nothing had been done; that the influence of the agents of Government, their powers of persoasion and argument, had been exhaosted, both in poblic councils and in private interviews, to induce them to do right; that we had lingered long enough in the performance of our doties to have averted, had they been willing, the evils that threatened their foolish resistance to the folfilment of pledges solemnly and fairly made by them; and that now it was time to *act*. He had been sent here to enforce the treaty; he had warriors enoogh to do it, and he would do it. It was the qoestion now, whether they would go nf their own accord, or go by force." With this, they were told they might depart; and until morning was given them to think opon what had been said. "In the course of the morning, eight principal chiefs gave their assent to abide by the stipulations of the treaty; five remsined opposed to it."

Micanopy was absent. "General Thompson had, opon *the first* intimation in the council of *this day*, of forther resistance on the part of the chiefs, demanded of the chief Jumper whether Micanopy (by whom he knew the movements of a number of them to be controlled) intended to abide by the treaty or not? And when Jomper finally confessed that he was authorized to say that Micanopy did not, he (Thompson) promptly declared that he no longer considered Micanopy a chief; that his name shoold he strock from the council of the nation; that he shoold treat all who acted like him in the like manner; and that he would neither acknowledge nor do bosiness with him or with any other, as a chief, who did not honestly comply with the terms of his engagements; that the door was, however, still open to them, if they wished to act honestly."

"In consequence of this, the namea of the *five opposing chiefs* [Micanopy not present] were struck from the council of the nation."

All this preceded the signing the agreement; and under this threat and this act the articles were signed. If an enemy in arms, force may compel the conquered to submit to any terms the conqueror may dictate; but, sir, what can be said of this as a transaction between a civilized—a powerful nation—and a small band of Indians, with whom we were at peace; and who then

dared to claim what they now dare to defend? Sir, between civilized nations it could not exist a moment.

But what do you think the Government said of this transaction? They rebuked their agent for breaking the five chiefs; they acknowledged that the assent of the chiefs to the articles was the effect of the menace. But what was said of that menace? Sir, I will not rely on witnesses: I shall sustain myself only by the record; and here it is.

The acting Secretary of War, on the 20th May, 1835, in reply to it, says:

"From your report, it appears that eight of the principal chiefs have signified, in writing, their determination to abide by all the stipulations of the treaties of Payne's Landing and Fort Gibson, and that five of the principal chiefs refused to acknowledge them. The assent of the chiefs is to be attributed, it would seem, to the declaration of General Clinch—that, if they declined to remove voluntarily, they would be removed by force. The President approves of this declaration, upon a full consideration of the circumstances under which it was made."

And what were those circumstances? "The Seminoles had trifled sufficiently long with the most solemn treaty obligations, to which they had, in the first instance, acceded, with a full understanding of their character, and the consequences of which they had had, during three years, full opportunity to perceive and appreciate."

And this is not all, sir. Mr. Thompson, in his letter of the 18th June, in reply, states that this declaration had been before repeated, under the authority of the Department.

Such, sir, was the arrangement in open council, which, it is alleged, was made to the *mutual satisfaction of the parties!*

II. That the Government has attempted to enforce the treaty, in violation of its own construction.

The construction to which I refer is contained in the Attorney General's opinion—that the Seminoles were to be removed in the years 1835, 1836, and 1837, instead of the years stipulated in the treaty.

In violation of this construction, the Government have insisted *to* the Seminoles that they should all remove in the year 1835.

General Thompson, in his letter of the 28th October, 1834, states that he told the Seminoles, "I have come from the President to tell you"—"that you must prepare to remove by the time the cold weather of the winter shall have passed away." The proposition was general. No intimation was given that they were to be allowed a longer time.

In accordance with the principles of the subsequent opinion of the Attorney General, the Secretary of War wrote to General Thompson, distinctly stating that the part of the Seminoles required by the treaty to remove in 1833, should remove in 1835; and the plain inference from this letter was, that the remainder should remove in 1836–'37. General Thompson, in his letter of the 28th December, states that this letter was read in council to the Seminoles. But how was it *understood* by the Seminoles? Was it made the basis of any proposition? No, sir; the language to them was the same as had been held to them in October. He says that in council "I read your speech, explained it, and enforced it by such considerations as occurred to me; of which, however, my talk to them in council in October last may, in substance, be considered a transcript. I repeated what I had told them before, that they would be compelled by force to remove, if they did not do so willingly," &c. In his letter of the 27th January following, he states, "I have heretofore (when?) submitted to the Secretary of War some reasons

why the Indians should be removed *all at the same time, by water.*" And finally, on the 9th March, General Clinch states to the adjutant general, "In all the communications I have had with the chiefs, I have held out the idea, that as the three years stipulated in the treaty was about expiring, the whole nation would be required to remove this spring."

The President's talk of the 16th February, 1835, is also in accordance with the opinion of the Attorney General—that the Seminoles were entitled to the years 1835,–'36,–'37 in which to remove.

It appears from the joint letter of Clinch, Thompson, and Harris, of the 24th April, 1835, that this talk was read in council on the 22d. And how too was this *understood* by the Seminoles? Was it made the basis of any proposition? It was not. This, sir, is the proper place to notice the residue of the statement of the Secretary of War of the 25th May last—that "the officers charged with the arrangement of this affair [the arrangement of the 23d of April, 1835,] then made an agreement with the Indians by which they were all to be removed during the succeeding January. These proceedings were approved by the President, and tho matter was considered as definitively and satisfactorily arranged;"—"and that whatever they [the objections to removal] were, the above agreement put an end to them, and left to the Seminoles but one course to pursue, which was an entire removal in January, 1836."

The committee will call to mind the occurrences in the council of the 22d and 23d of April, when it is alleged this agreement was made. It opened with the declaration of General Clinch, that "*now* was the time to act; "that he had been sent here to enforce the treaty; that he had warriors "enough to do it, and he would do it. It was the question *now*, whether they "would go of their own accord, or go by force." That until morning time was given them to think of it; that in the morning, the names of five opposing chiefs were stricken from the council of the nation; and that, under this menace of instant force, the eight chiefs signed what has been called "the arrangement to the *mutual satisfaction of both parties.*" This arrangement purported merely to be an assent to the stipulation of the treaty. It was silent as to the time of removal. From what, then, is the assent of the chiefs to remove in January inferred? I again refer to our own story: "The friendly chiefs, whilst assenting to go, begged they might not be hurried away; they did not expect to go this year; the season was far advanced, and they wanted time to gather their crops, and settle their little business." Sir, they begged for a *reprieve* from the immediate execution of the sentence, and that *reprieve* was granted. The letter states: "Under these circumstances, we deemed it our duty to say to the friendly chiefs, that we would give their people until the 1st of December to reap their crops, and to complete their preparations; but that as soon after that time as we could make ourselves ready, *every Indian in Florida* would be *started* upon *his journey to the new country.*"

Such is the agreement which it is now insisted put an end to the objection of the Indians to their removal, and left them but one course to adopt—an entire removal in January, 1836. If the proposition was ever made by our agent for a removal in 1835,–'6,–'7, other than I have stated, I have not been able to find the record of it.

III. The Government havo attempted to execute the treaty by an act of war, before any act of hostility was committed by the Seminoles.

On examining the correspondence, I find, sir, that the menace of force has accompanied all our overtures, even prior to the ratification of the treaty.

On the 21st of February, 1834, the Secretary of War, in a letter to Governor Duval, uses this language:

"The Government uses no compulsion with the Indians. It is left to their free choice, in the first case, to go or stay; but after that choice is fully and freely made, and they have obligated themselves to remove, the Government will employ the necessary measures to enforce their removal."

In the council of the 23d of April, the Seminoles were told, "You must go to the west; your father the President will compel you to go."

The talk of the Secretary of War of the 22d of November, 1834, says, "The President has directed a body of soldiers to be sent into your country."

This letter was preceded by General Thompson's letter, (of the 28th October,) saying, that "a full view of all the circumstances leaves me without doubt that these deluded people are determined to resist the execution of the treaty."

On the 24th November, 1834, orders were given to march troops to Forts Brooke and King, and for General Clinch to co-operate with them.

On the 28th December, General Thompson says, that at the council of the 26th, "I repeated what I had told them before, that they would be compelled by force to remove, should they not do so willingly."

On the 27th of January, 1835, General Thompson suggested to the Department that the military force in Florida was insufficient.

In the President's talk of the 16th February, 1835, the Indians were told, "I have ordered a large military force sent among you, &c. &c.; listen to the voice of friendship, yeu will go quietly; but should you listen to bad birds that are flying about you, and refuse to remove, I have then directed the commanding officer to remove you by force. This will be done," &c.

On the 8th March, Governor Eaton requested General Clinch to delay the execution of the orders until he should receive an answer to his letter to the Secretary of War of that date.

On the 26th March, the Attorney General gave his opinion; and on the 14th April, the Secretary of War wrote to General Clinch, that "if they (the Seminoles) all be willing to remove this year, it will certainly be better to remove them; but, in that case, let a written agreement be drawn up, stating the reasons of the delay, their entire readiness to remove by the time, and go in a body, and by such ronte as you and General Thompson shall think best for them and most economical to the Government; but if they are opposed to this, and will generally agree quietly to remove by the 1st of March, or as soon as arrangements can be made, they may be suffered to remain until that time. Should the Seminoles, however, peremptorily decline to pledge themselves peaceably to remove next season, you will then proceed to carry into effect the instructions heretofore given."

This order produced the menace of Clinch, in the council of the 22d of April, "that he had warriors enough," &c. &c.

On the 20th May, the Secretary of War, in reply to their joint letter of the 24th, wrote to Thompson, Clinch, and Harris, (referring to the letter above, of the 14th April,) "If, as stated in that letter, the Indians will generally agree quietly to remove by the time you have designated, and will signify their agreement in writing in the manner therein pointed out, no objections will be made to the postponement. But the Indians must understand that their removal will be enforced in conformity with the treaty."

About the 3d June, Powell, (Oseola,) one of the most bold, daring, and intrepid chiefs in his nation, on account of his insolence, was put in

irons—put an Indian chief in irons! On his release, he appeared friendly—who that knows the Indian character could rely on such appearance?

The next unfortunate occurrence was on the 18th June, when seven white men, meeting five Indians, took away their rifles, flogged four of them with cowhides, and, other Indians coming to their relief, a fight ensued, in which three white men were wounded and one Indian was killed. Our officer demanded the Indian *aggressors;* and, what is more extraordinary, they were delivered up.

On the 11th August, the Seminoles killed a soldier, while carrying the mail, in retaliation for the Indian killed by the whites, and declared themselves satisfied. This was regarded in its proper light by our officer—as a mere act of retaliation.

On the 30th of November, the Seminoles killed one of their chiefs, who had been friendly to their emigration; and immediately all the friendly Indians, to the number of four or five hundred, fled to Fort Brooke for protection. This act was deemed decisive that the Indians would resist their removal by force. It was now, sir, no longer a question of menace. It was a question of war—of the employing a military force to execute a treaty. I characterize the act by the term applied to it by General Eaton in advance. In his letter of the 8th of March, he says, in reference to the execution of the treaty, "the employing a military force will be an *act of war*, and," further, "the Indians will embody and fight in their *defence*."

Our military force, consisting of twelve companies, immediately concentrated; and, on the 23d, a corps of two hundred men attempted to march through what might then be called the *enemy's country*. Thus, we had marched a military force into their country, for the purpose, repeatedly declared to the Seminoles, of removing them by force; and thus was the act of war completed before a single hostile act was committed by the Seminoles. The Seminoles, fulfilling the prediction of General Eaton, "embodied and fought in their *defence;*" and the fate of the unfortunate Dade was told by only three of his men. Here, sir, I leave the war at its commencement. How the battle has fared since, I leave to others to say.

It is proper, however, and it is just, to say, that the administration here must necessarily judge of the state of things in Florida through the representations of their agents on the spot; that, from the first question of the execution of the treaty, all our officers and agents there strongly recommended the execution of the treaty by a military force; and, so far as it was intended to produce an effect as a menace, though a policy of a doubtful character, it might, in a just cause, be excused, if not justified. But, sir, if the question I have asked, Is our quarrel just? be answered in the negative, we must stand as the aggressors, without cause and without justification.

But, sir, take it for granted that the treaty was obligatory, and that we had only insisted on its just execution; the question then arises, has the Executive the power to execute a treaty by an act of war? It is the duty of the President to take care that the laws be faithfully executed, but by such means, and by such only, as the constitution or the laws have provided. To Congress it belongs to make all laws necessary and proper for the execution of the special grants conferred upon Congress, and of all other powers vested by the constitution in the Government of the United States, or in any Department or officer thereof. The execution of a treaty by force, or attempting to obtain satisfaction by force, is virtually an act of war; and this power is vested in Congress alone.

In regard to our own citizens, treaties are the supreme law of the land,

and are executed as such; but, as between the parties, they are matters of compact, in which each party judges for itself, and seeks its remedies under the laws of nations; and the exclusive right which we have assumed to judge for both parties defines our power, but not our right. This, however, cannot change the character of treaties with the Indian tribes, and reduce them from compacts to laws.

The action of the Executivo, in the cases of the Seminoles and the Creeks, though directly opposite, is within the same principle. In the case of the Seminoles, an attempt was made to execute a treaty by an act of war. In tho case of the Creeks, the attempt is to violate a treaty by an act of the same character.

I forbear, Mr. Chairman, to comment on a variety of minor considerations which may have had an influence in favor of or against the voluntary removal of the Seminoles, or in adding to the excitement produced by the principal facts in the case—the desire of the whites to retain or to purchase their slaves, and to obtain their lands *per fas aut nefas*, operating on the one hand to obstruct their removal, and on the other to induce their immediate removal by force.

What, Mr. Chairman, may be, if not the probable, the possible effect of the adoption of the amendment of the committee? It will be considered by the Executive as an authority, as a warrant, for the removal of the whole Creek nation by force. Is there not danger that it may excite the whole nation, or a large portion, to make common cause with the Seminoles? They will take courage from their success. They will, to use the language of General Eaton, "take up the tomahawk in despair." It may be a war to them of extermination, and to us of great peril. What are your present relations with the Cherokees—a tribe which, since your first treaty with them, has never taken the scalp of a white man—a tribe which has borne and forborne? But, sir, have you done any thing of late calculated to prolong that forbearance? Sir, I learn from a publication in the Globe, that we have lately made a treaty with them, by which we have fulfilled our longing desires of acquiring a cession of all their lands. I learn, also, from other sources, that this treaty has been made with one-tenth of the tribe against the remonstrance of the remainder. What state of feeling will grow out of this, it is impossible to say. I hope, sir, they will acquiesce in the treaty, if not in its justice—fully believing that, as circumstanced, their happiness will be promoted by their removal. But, sir, they will judge for themselves. The force of the Indians east of the Mississippi is competent to much mischief. In a war, which may become a war of extermination, is it wise to provoke new enemies to "raise the tomahawk in despair?" You may probably rate the force of the Seminoles at 1,500; the Creeks at 3,500; the Cherokees at 3,000; the Choctaws and Chickasaws, and others that are vagrant remnants of tribes, at 2,000 more—a force of 10,000 warriors. The modern Indian wars of the South are not of the character of those of Ohio, Kentucky, and Tennessee, of former days. Then, on the attack, the settlers flew to the rescue; now, sir, the flight is in any other direction. Causes over which individuals, perhaps, have no control, have given an entire different character to our defence. And is there no danger that an Indian war may connect itself with a war of another character? Sir, those who are the most interested will judge in what scale to place these apprehensions. I trust in God they may never become realities.

But, sir, what is proposed to be done with the Indians? To remove them with all their hostile feelings—to remove *whipped* Indians to the west of Mis-

souri and Arkansas, and plant them there! What have you gained, but to change the scene, and to increase your danger? You place them there to excite the surrounding tribes to war on your whole western frontier—tribes who can bring into the battle 30,000 warriors, and sustain them, too. They can choose their point of attack, and retreat at pleasure, where you cannot follow, to return to the attack in some other quarter—tribes, too, which can be supplied with arms by a neighboring nation, which is not, perhaps, now in the best state of feelings towards you. Grant, sir, that these are mere possible dangers; yet should we not be put on our guard even against remote contingencies? Why should we add further cause for increasing the hostilities which now exist? Why continue even these hostilities, if they can be avoided? Must we continue the Seminole war for another *campaign*? What new laurels are to be won? It is asked, is it practicable to end the war without further slaughter? Sir, on this subject I rely entirely on the opinion of those better acquainted with the character of the southern Indians than myself; and, from the opinions of those entitled to confidence, I am satisfied that it is practicable, and that while our army is in *summer quarters*, the war might be ended. Sir, the experiment is worth the attempt; if we fail, nothing is lost.

I cannot but recur to the period when the system of removal commenced; when the gentleman from Tennessee (Mr. Bell) introduced the bill of 1830. Predictions were then made, which were treated as impossibilities; but, sir, they will soon be a part of our recorded history.

APPENDIX.

Tallahassee, *March* 8, 1835.

Sir: I have received your letter, with its enclosures, relative to removing the Seminole Indians, under the provisions of the treaty of 1832, but which was not ratified until 1834. I pray you, does not this circumstance raise a doubt whether, by strict rule, the treaty can be considered valid and binding? Our Indian compacts must be construed, and be controlled, by the rules which civilized people practise; because, in all our actions with them, we have put the treaty-making machinery in operation precisely in the same way, and to the same extent, that it is employed with the civilized Powers of Europe. The rule practised upon by us has been, and is, that the ratification shall take place within either an agreed time or in a reasonable time.

When Florida was ceded, in 1819, the *Cortes* failed to exchange ratifications within the prescribed time, and afterwards, at a subsequent session, it was assented to by the Spanish Cortes. The sense of this Government was, that the first ratification made by the Senate was inoperative; and again the subject was submitted, by Mr. Monroe, for the action and approval of the Senate. This appears to me to be a precedent which runs parallel with this Indian compact. It says, one-third shall remove the first year, viz: as early as practicable in 1833, and one-third in the next, and the next, 1834 and '35. Now, until 1834, when the ratification took place, the treaty was a dead letter. It is in their power now to plead and to say, we were ready in 1833 and '34, and, hearing nothing of your determination, we had a right to suppose that you did not mean to stand by the treaty, and accordingly our minds have changed. With civilized nations, I think the plea would be available; and, if so, the Indian should have the benefit of it.

Were these people willing voluntarily to remove, (though such seems not to be the case,) the whole difficulty would be cured, and no evil could arise. But as military force is about to be resorted to, it is material that the Govern-

ment, before making such appeal, be satisfied that right and justice are on their side; and that they are not engaged in the execution of a treaty which, if void, is no part of the law of the land. I feel so strongly the force of these objections, and am so desirous that General Jackson shall avoid every thing of supposed error, that I shall to-day, unauthorized as I am, write to General Clinch, and request him not to act *with force*, until he shall hear again from you. This he may probably do; and hence the propriety of your considering my suggestion, and advising him as early as possible.

Should you at Washington, who have books to resort to, to solve the doubt I have mentioned, come to the conclusion that it is tenable, why then the subject of the removal, and the manner of it, are unnecessary to be examined. An attempt must then be made to go into some new negotiation. If there be nothing in the proffered objections, then the best mode of starting them away recurs.

The employing a military force will be an act of war, and the Indians will embody and fight in their defence. In this event, you will want such an imposing force as shall overawe resistance. The few companies you have ordered will not produce this result. They will serve but to begin the fight, and to awaken angry feelings; so that, in the sequel, the militia will have to be called, which will end in the butchery of these miserable people. Send a strong *imposing regular force*, which can be commanded and prevented from doing more than actually is needful to be done; and then that force, judiciously acting and forbearing, may do much. But send only a handful of men, and difficulties will come upon you.

The next thing will be to have suitable transports, of seven or eight feet draught, lying at Tampa Bay, well provisioned, to receive them; for, sure as you seek a passage over land, they will desert into swamps, and elude your pursuits. They are afraid to go by land. Bad men will raise up false accounts, arrest and throw them in jail, whereby to enforce payment. The fate of their chief, Blunt, last year at New Orleans, they fear will be theirs. Taking them by water to the Mississippi river, and there placing them in boats, with positive orders not to land or stop at any town or city, will prevent this disturbance to them. In three or four days the voyage can be made from Tampa Bay to the Balize, at a much reduced cost to what a land travel northwardly would amount to.

There is another difficulty in the minds of these people, and it is this: A separate tract out of the Creek lands has been set apart for their homes. There is a ratified treaty in your office, made by General Stokes, Ellsworth, and Schermerhorn, with the Creeks, which authorizes the Seminole location. While negotiating with the Indians last year, at Washington, I understood that the Creeks discovered this act, and had sent word to the Seminole bands, that, while they were willing to receive them in their limits as a portion of their nation, they would not suffer them to enjoy any separate allotment of their soil. This, too, has intimidated them, and, I dare say, is the essential cause of their reluctance to go off. To cure this, either the Creeks west should be gotten to say that the allotment made shall be for the exclusive separate use of the Florida Indians; or the latter should be prevailed upon, for some adequate compensation, to agree to go and amalgamate with the Creeks. Another mode of prevailing on these people to remove, would be, to give orders to the troops to prevent them from raising corn this year: this is almost as severe a remedy as employing your bayonets. But the effect will be, that, towards autumn, their necessities will compel them to depart. To go or starve, would then be the question.

General Thompson was here a few days since, and found a letter for him from the Department. He should not be addressed here, but at the Seminole agency, distant from this place, I believe, one hundred and fifty miles.

This Indian question of removal is one that should be managed with great caution and care, that the enemies in Congress, ever ready to find fault, may have no just and tenable ground on which to rest their rumors. Tread cautiously, then. The people here want the lands on which they reside, and they will urge a removal, *fas aut nefas;* and the Big Swamp, which in the treaty is

declared to be the first of their country to be vacated, is of high repute, and it is that on which the eyes of speculators are fixed. But whether they shall have it this year or the next, or the next thereafter, is of less importance to the country, than that any thing shall be done calculated to impair the character of the Government for justice, and for equitable and fair dealing. Whence the necessity of any speedy removal? Presently, if left alone, these Indians will go of their own accord; because they cannot avoid it. To stay, is to starve; and nature and its demands will soon tell them more, and better, and more convincing things on this subject, than you and the President can write. Then they will go, and go without any interruption to the quiet and harmony of the country. Now, with all your efforts, and the army to aid you, they could not be carried off and gotten to their western homes before June or July. Then, no crop could be raised, and for two years they will be without provisions. The preferred and preferable course, I think, will be to send amongst them active and intelligent men to court them to what is right, in the hope that, during the year, their minds may be so prepared as to be induced to depart during November; at least, that they may reach their homes in time to raise corn the succeeding year. On the whole, to conclude a tiresome letter, I offer this advice: avoid the exercise of *force* as long as possible; and let it be the only, the last sad alternative; and then let not, by any means, the *militia* be applied to—they will breed mischief.

With great respect,

J. H. EATON.

Lewis Cass, *Secretary of War.*

Tallahassee, *March* 8, 1835.

Sir: I have received from the Secretary of War a letter asking me to suggest to him any views I might entertain as to the removal of the Seminole Indians. Enclosed in his communication was a copy of a letter addressed by you to the adjutant general, dated 22d January, 1835; a reply to it by the Secretary, of the 16th February; with a talk from the President, also dated 16th February. In reply, I have offered my opinions freely and frankly; and, amongst other things suggested, whether the treaty of 1832 be not void, for want of timely ratification. If this be so, it will be unfortunate that the military force of the country be actively employed.

In my letter I have said, "by the next mail (unauthorized) I shall write to General Clinch, and suggest to him not to employ force towards the removal, until he shall again hear from you. He may, perhaps, under all the circumstances, accord to my request; and hence the necessity of your speedily informing him of the course he shall pursue." If, under the orders given, you shall think you can practise forbearance until the Secretary is again heard from, I shall be glad; because my opinion is, there is greater safety in the course. But of this you alone are to judge, under the responsibility of the orders which have been forwarded to you.

Very respectfully,

J. H. EATON.

To General D. L. Clinch.